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| EXAMINER | | | | |
| SELF, SHELLEY M | | | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/578,169

Applicant(s)

LENNARTSSON, CHRISTER

Examiner

Shelley Self

Art Unit

3725

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 April 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-21 is/are pending in the application.
4a) Of the above claim(s) 2 and 22 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 13-21 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 03 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-85/86)
Paper No(s)/Mail Date 3/13/07
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Inventor's Patent Application
6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of the invention of Group I (clms. 13-21) in the reply filed on April 7, 2008 is acknowledged. The traversal is on the ground(s) that the Examiner failed to set forth any materially different apparatus and that a search of all claims (i.e., 13-24) would not be an undue burden to the Examiner as a search of the invention of Group II is required to conduct a complete search of the elected invention of Group I. This is not found persuasive because as noted in the Restriction requirement, the invention of Group I can not practice the invention/method of Group II as recited in the claimed invention of Group II, therefore a materially different apparatus is necessary to conduct the method of the invention of Group II. In response to Applicant's remarks that no undue burden or hardship is placed on the Examiner to search both inventions this is not found persuasive. Also as noted in the restriction requirement the inventions of Groups I and II have separate classification and therefore would require different search strategies. Furthermore, an Applicant is entitled to a patent to a *single* invention, because the invention of Group I is separable from that of Group II, restriction is required.

The requirement is still deemed proper and is therefore made FINAL.

Specification

Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed

150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phrasology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

The abstract of the disclosure is objected to because the Abstract exceeds 150 words.

Correction is required. See MPEP § 608.01(b).

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the *processing unit* (clms. 16, 17) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "11" (pg. 5, line 34) and "12" (pg. 5, line 33) have both been used to designate an *outer casing*.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the

renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 13-21 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Neither the disclosure nor the drawings provide support for how the diameter is calculable. Examiner notes the specification supports a comparison from read diameter values that are directly read from the tree stem, however the specification is silent to a "calculable" diameter values.

Further regarding claim 21, neither the specification nor the drawings as originally filed support movable measurement means as *ultrasound devices*.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 13-21 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. With regard to the claims, the claims lack clear, positive recitation of mechanical cooperation between the elements. For example, there is no mechanical cooperation between the grapple means, cutting tool, limbing/trimming device, advancement means or first and second measurement means. The claims appear to be a listing of elements. Is the cutting tool operatively connected to the grapple means or the limbing/trimming device? Failure to positively recite any cooperation between the elements leads to ambiguity (i.e. there is no clarification as it relates the measurement devices, is the first connected to the grapple means or the cutting tool?) and renders a clear understanding of the claimed invention highly difficult.

Further the recitation, "its", renders the claimed invention unclear as it can not be determined what "its" references. Examiner suggests positive recitation of the structure/element to which "its" refers.

Additionally regarding claim 13, the claim is replete with intended use recitations (for grasping, for cutting, for trimming for measuring, etc...). Examiner notes the intended use recitations do not impart any structure within the claimed invention and therefore are not given any patentable weight.

Clarification is required to facilitate a clear understanding and proper application of the prior art. Applicant is required to review ALL of the claims for clarity, ambiguity, and positive recitation of all critical interrelationships.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13-21 as best as can be understood are rejected under 35 U.S.C. 103(a) as being unpatentable over Niemi (6,318,425) alone or in view of Helgesson et al. (4,250,935). With regard to claims 13, 20 and 21, Niemi discloses a harvester comprising grapple means (3a, 3b, 3c), a cutting tool (8), a limbing/trimming device (4a, 4b, 4c), advancement means (6a, 6b), a first measurement device (15) a second measurement device (11, 12) including movable measurement means for contact-free detection of an outer contour of the tree, from which a diameter is calculable (col. 9, lines 15-25-7).

In the event it is argued that Niemi fails to disclose contact free moving measurement means or photocells/ultrasound devices. Helgesson teaches that it is old and well known in the harvesting art to utilize non-contact measurement devices (15) or photocells/ultrasound devices so as to efficiently measure the diameter of a cut/felled tree and transmit the value of the diameter to a control system for efficiently determining diameter/girth of the tree trunk for further processing. Because the references are from a similar art it would have been obvious at the time of the invention to one having ordinary skill in the art to construct Niemi having non-contact, photocell or ultrasound devices as measurements means so as to efficiently determine the diameter of a tree trunk as taught by Helgesson.

With regard to claim 14 as best as can be understood, Niemi discloses wherein the second measurement device is disposed beyond a gap.

With regard to claim 15, as best as can be understood, Niemi discloses wherein the second measurement device is disposed above the tree stem.

With regard to claims 16 and 17 as best as can be understood, Niemi discloses a processing unit (10).

With regard to claims 18 Ina 19, both Niemi and Helgesson disclose the measurement devices to be movable.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shelley Self whose telephone number is 571-272-4524. The examiner can normally be reached on 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on 571-272-4419. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Shelley Self/
Primary Examiner, Art Unit 3725

May 15, 2008